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ADB

***STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN  
THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW  
CHAMPIONS  
Cebu, 22-26 August 2016***

**SESSION SEVEN: NATURAL RESOURCES MANAGEMENT LAW**  
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## LEARNING OUTCOMES OF SESSION 7

### Session Topic

- Understanding the legal concepts of ownership and allocation of natural resources
- Understanding the shift from resource exploitation to sustainable natural resources management
- Understanding the role of resource-specific legislative schemes and their relationship with other environmental laws.

### Teaching Methodology

- Understand the concept of a role play



## INTRODUCTION TO NATURAL RESOURCES LAW

- Natural resources law is often taught as a separate and distinct subject from environmental law
- For the purposes of the TTT course, it is important for participants to understand how this category of laws governs the **management and conservation of natural resources from an environmental perspective ;**
- TTT participants may also want to consider the possibility that aspects of natural resources law can be incorporated within their own environmental law course.



## THE SCOPE OF NATURAL RESOURCES LAWS

- Most countries have developed specific laws providing for **the grant of rights to own, use or extract** various types of natural resources, in particular :
  - Land;
  - Water;
  - Forests;
  - Minerals;
  - Petroleum (oil and gas – including, recently, “unconventional” gas);  
and
  - Fisheries.



## THE LEGAL BASIS OF NATURAL RESOURCES LAWS

- The legal basis for the operation of most natural resources laws is that the “**dominant**” **title** (or, in other words, the ownership) of such resources belongs to the government;
- The relevant level of government that enjoys this dominant title can vary from one country to another:
  - In countries with a **federal** constitutional system (e.g., USA, Canada and Australia, it is often the state/provincial governments that own natural resources such as land, forests and minerals, whilst the national (federal) governments own offshore resources (oil and gas/ fisheries)
  - In countries with a **unitary** constitutional system, either national or regional governments may own natural resources.



## THE PURPOSE OF NATURAL RESOURCES LAWS

- the original **purpose** of natural resources laws in most countries has been to provide for an ordered process for the allocation of rights to natural resources (resource “tenures”) so as to avoid conflicts between competing interests;
- The original versions of natural resources laws in many countries may date back more than 100-150 years and were not written with environmental considerations in mind;
- However, modern versions of these laws that have been developed over the last 30-40 years have included provisions that require the administering authorities to consider the environmental impacts of resource utilization activities when granting rights to natural resources;



## THE PURPOSE OF NATURAL RESOURCES LAWS

- Thus, the underlying **purpose** of natural resources laws is now one of **balancing** the perceived benefits arising from the utilization of particular types of natural resources with the need to avoid significant environmental impacts;
- In addition, such laws aim to ensure that **renewable** resources such as water, fisheries, wildlife and forests are “sustainably” managed so as to avoid over-extraction or excessive depletion;
- This balancing process generally does not result in refusals to grant rights to relevant resource but rather in the imposition of environmental safeguards through **conditions attached to the relevant grant of rights.**



## MECHANISMS UNDER NATURAL RESOURCES LAWS

- The principal **mechanism** for the allocation of rights to utilize natural resources is the grant of various forms of resource “tenure”;
- These may range from a full **transfer of ownership** of the relevant natural resource from the government to other parties (e.g., for land, or minerals/gas) to more limited forms of tenure - such as **leases, licences or permits** (e.g., to take water, to use land for particular purposes such as the grazing of sheep or cattle or to operate as a commercial fisher);
- There may also be a requirement to make payments to the relevant government in return for the grant of resource tenures (e.g., mining and oil/gas “royalties”)





## MANAGEMENT MECHANISMS UNDER NATURAL RESOURCES LAWS

- It is common for natural resources laws in many countries to require **resource management plans** to be developed;
- These plans are intended to provide policy guidance to administering authorities with respect to their decisions on the allocation of tenure rights, for example, water allocation plans, fisheries management plans and forests management plans.



## NATURAL RESOURCES LAWS TO PROTECT SOILS

- in many countries, additional laws have been adopted to provide for the **protection of the land resource (soils)**, for example :
  - Soil conservation legislation to protect land from degradation through poor agricultural practices;
  - Laws to prevent excessive clearance of natural vegetation by farmers; and
  - Special legislation to enable the control of “invasive” species of plants and animals.
- These laws often employ “command and control” mechanisms such as **orders** by administrative authorities to require land-holders to take remedial action to protect the land resource for which they are responsible;



## INTEGRATED NATURAL RESOURCES MANAGEMENT

- There is a general trend towards providing for **integrated natural resources management** in order to better coordinate the operation of previously disparate natural resources management laws;
- In particular, laws have been adopted in a growing number of countries to enable the coordinated management of land and water within a particular region such as a river catchment;
- These laws may be accompanied by administrative arrangements for the establishment of **regional natural resources management authorities** to develop resource management plans and administer the granting of resources tenures.



## TRANSBOUNDARY RESOURCE MANAGEMENT ISSUES

- Trans-boundary conflicts may arise in relation to natural resource management, especially where river systems extend across multiple jurisdictions, for example:
  - Over-extraction of water by upstream users (see the Murray-Darling Basin in Australia, where relevant State and Federal jurisdictions have developed joint management arrangements);
  - Reduction of water flows through the development of dams for hydroelectricity or water storage purposes (see the decision of the International Court of Justice in the *Gabčíkovo-Nagymaros Case* [1997] ICJ Rep 7 (River Danube));



## TRANSBOUNDARY RESOURCE MANAGEMENT ISSUES

- Trans-boundary pollution impacts may also arise from resource extraction activities, for example –
  - Air pollution from the ongoing burning of forests in Indonesia;
  - Marine pollution and damage to fisheries from oil well spill accidents (e.g., Montara oil spill in the Timor sea in 2009);
  - Illegal fishing in Philippines waters by foreign nationals
  - See case studies presented in Session 11.



## RELATIONSHIP BETWEEN NATURAL RESOURCES LAWS & OTHER TYPES OF ENVIRONMENTAL LAWS

- Other types of environmental laws may be applicable to projects that involve the utilization of natural resources, for example:
  - Spatial planning and environmental impact assessment procedures in relation to new mining or forestry projects; or
  - Environmental protection (pollution control) measures in relation to new mining, oil and gas projects;
- however, it is common for the operation of relevant environmental protection legislation to be **excluded** by the particular natural resources legislation, which provides a “one-stop-shop” approach to the grant of resource tenure and the management of the related environmental impacts.



## CONCLUSIONS

- NRM laws constitute a distinct and substantial component of environmental law that may be taught as a separate subject (or specific subjects, e.g., water law, forestry law, mining law etc.);
- But it is also possible to include aspects of NRM law in a general course on environmental law;
- For countries in the SE Asian region, there is also a trans-boundary perspective that deserves particular attention (and may involve the application of international/regional law)

